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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 15 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Petition of the People of the State of)
California and the Public Utilities)
Commission of the State of California)
to Retain Regulatory Authority Over)
Intrastate Cellular Service Rates)
_____))

PR Docket No. 94-105

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PETITION FOR WAIVER OF AIRTOUCH COMMUNICATIONS

AIRTOUCH COMMUNICATIONS

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PETITION FOR WAIVER OF AIRTOUCH COMMUNICATIONS

AirTouch Communications, Inc. ("AirTouch") hereby seeks a waiver of Sections 0.457, 0.459, and 0.461 of the Commission's Rules¹, as well as relevant sections of the Second Confidentiality Order² so that it may have immediate access to certain information concerning AirTouch which was submitted under seal by the California Public Utilities Commission ("CPUC") in this proceeding. The requested material consists of confidential documents obtained by the CPUC by the California Attorney General ("AG Excerpts") and submitted to the Commission in support of the CPUC's Petition to regulate rates for cellular service.³ As a threshold matter, AirTouch submits that a waiver is not necessary. AirTouch's request for access is limited to its own data,

¹ 47 C.F.R. §0.457, 0.459.

² See Second Confidentiality Order at ¶ 20, 24, 31, 34, 41, 44, 45, and 49, PR Docket Nos. 94-103, 94-105, 94-106, 94-108, DA 95-208, adopted February 9, 1995, released February 9, 1995 ("The Order").

³ See Order at 12. AirTouch has specifically requested access to the pages of the CPUC Petition containing the AG Excerpts, as well as any supporting documents submitted with the Affidavit of Ellen LeVine, which relate to AirTouch.

and thus there will be no public disclosure. The confidentiality concerns usually implicated in the Commission's rules are simply not at issue here. In any event, Ellen LeVine, counsel for the CPUC, has advised AirTouch that the CPUC does not object to the FCC's immediate disclosure to AirTouch of the AG Excerpts relating to the Company.

As described in the Order, the materials at issue are "excerpted from internal company marketing documents that disclose the companies' various contemplated responses to present and anticipated competition, including specific marketing initiatives."⁴ Parties to the proceeding have expressed concerns regarding the competitive harm that may occur if the excerpts are released, as well as the legality of disclosure.⁵ Nevertheless, the Order provides that the AG Excerpts will be released to the parties subject to a protective order on February 17, 1995 unless a party files an application for review prior to that date.⁶

AirTouch requests the instant waiver so that it may review any AG data relating to its operations prior to release to the other parties. During the course of the AG proceeding thousands of documents were submitted pursuant to subpoena and we have no knowledge as to the specific documents that may be released in this proceeding. The requested waiver will not prejudice the rights of any party and may in fact conserve Commission and parties' resources in the event that AirTouch determined review of the Order is unnecessary.

⁴ Id. at ¶ 30.

⁵ See, e.g., Order at ¶¶ 25-27.

⁶ See Order at ¶¶ 44, 49.

Conversely, denial of the wavier request will severely prejudice AirTouch's due process rights. The most basic requirement of due process of law is notice and an opportunity to be heard. An opportunity to be heard is meaningless if the affected parties have no notice of the nature of the issues to be determined. AirTouch cannot be deemed to have had notice when it has no knowledge of the contents of the data to be released, and thus no opportunity to evaluate and comment on the prospects for competitive harm arising from release of the data. Absent access to the AG Excerpts, AirTouch simply cannot determine whether it is necessary to challenge the release of the data. The fundamental requirements of due process, as well as common sense, dictate that AirTouch be granted access to its own data prior to affording access to the other parties to the proceeding.

For the reasons discussed herein, AirTouch respectfully requests a limited waiver so that it may have immediate access to AG materials relating to AirTouch.

Dated: February 15, 1995.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS

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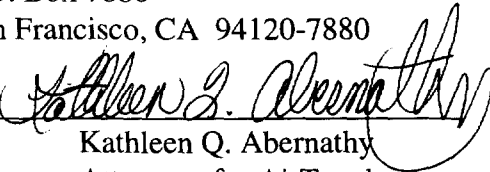
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By

A handwritten signature in dark ink, appearing to read "Kathleen Q. Abernathy", is written over a horizontal line.

Kathleen Q. Abernathy
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Certificate of Service

I, Monica Stamm, do hereby certify that I have on this 15th day of February, 1995 caused to be mailed a copy of the foregoing Petition for Waiver of AirTouch Communications first class United States mail, postage prepaid, to the following:

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